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THE PRESIDENCY

No. 123 22 January 2003

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 71 of 2002: International Trade Administration Act, 2002.

DIE PRESIDENSIE

No. 123 22 Januarie 2003

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 71 van 2002: Wet op Internasionale Handelsadministrasie, 2002.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

(English text signed by the President.)
(Assented to 30 December 2002.)

ACT

To establish the International Trade Administration Commission; to provide for the functions of the Commission and for the regulation of its procedures; to provide for the implementation of certain aspects of the Southern African Customs Union (SACU) Agreement in the Republic; to provide, within the framework of the SACU Agreement, for continued control of import and export of goods and amendment of customs duties; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1

DEFINITIONS, INTERPRETATION, OBJECT AND APPLICATION OF ACT

Definitions and interpretation

1. (1) A reference in this Act to an Article by number is a reference to such Article in the SACU Agreement. 5
- (2) In this Act unless the context indicates otherwise—
- “Cabinet” means the body referred to in section 91 of the Constitution;
- “claimant” means a person who has filed a claim in terms of Part D of Chapter 4, with regard to the confidentiality of information;
- “Commission” means the International Trade Administration Commission established by section 7; 10
- “committee” means a committee of the Commission;
- “Common Customs Area” means the combined areas of the Member States of SACU;
- “confidential information” means information that is— 15
- (a) by nature, confidential; or
- (b) recognised in terms of Part D of Chapter 4, to be otherwise confidential;
- “countervailing duty” means a customs duty imposed to off-set the benefit conferred by a subsidy;
- “Customs and Excise Act” means the Customs and Excise Act, 1964 (Act No. 91 of 1964); 20
- “customs duty” means customs duty as defined in section 1 of the Customs and Excise Act;
- “dumping” means the introduction of goods into the commerce of the Republic or the Common Customs Area at an export price contemplated in section 32(2)(a) that is less than the normal value, as defined in section 32(2), of those goods; 25
- “export” means to take or send goods, or to cause them to be taken or sent, from the Republic to a country or territory outside the Republic;
- “goods” includes—
- (a) all wares, articles, merchandise, animals, currency, material or objects of whatsoever nature; and 30
- (b) in relation to any particular goods, any other goods that are reasonably capable of being substituted for them, taking into account ordinary commercial practice and geographical, technical and temporal constraints;
- “import” means to bring goods, or cause them to be brought, from outside the Republic into the Republic; 35
- “information that is by nature confidential” means trade, business or industrial information that—
- (a) belongs to a person or the State;
- (b) has a particular economic value; and 40
- (c) is not generally available to or known by others, and the disclosure of which could—
- (i) result in a significant adverse effect on the owner, or on the person that provided the information; or
- (ii) give a significant competitive advantage to a competitor of the owner; 45
- “member” means a member of the Commission;
- “Member State” means a member of SACU;
- “Minister” means the member of the Cabinet responsible for trade and industry;
- “Minister of Finance” means the member of the Cabinet responsible for national finance; 50
- “National Body” means a body or institution established or designated by a Member State, as contemplated in Article 14;
- “organ of state” has the meaning set out in section 239 of the Constitution;
- “person” includes, among other things, a trust;
- “premises” includes land or any building, structure, vehicle, ship, boat, vessel, aircraft or container; 55
- “prescribed” means prescribed by regulation in terms of this Act;
- “Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “regulation” means a regulation made under this Act; 60

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- “regulatory authority” means an entity established in terms of national or provincial legislation responsible for regulating an industry or a sector of an industry;
- “SACU” means the Southern African Customs Union established by Article 3;
- “SACU Agreement” means— 5
- (a) the agreement establishing SACU, and attached as Schedule 1 to this Act; and
- (b) any annex to that agreement developed by the SACU Council as contemplated in Article 42, once such an annex has become law in the Republic;
- “SACU Commission” means the Customs Union Commission established by Article 7; 10
- “SACU Council” means the Council of Ministers established by Article 7;
- “SACU Tribunal” means the Tribunal established by Article 7;
- “safeguard measure” means a remedy or procedure for use in response to disruptive competition;
- “Tariff Board” means the SACU Tariff Board established by Article 7; and 15
- “this Act” includes the regulations and Schedules, other than Schedule 1.
- (3) This Act must be interpreted—
- (a) in a manner that is consistent with the Constitution and gives effect to the object set out in section 2; and
- (b) in a manner that is consistent with the purposes and intent of the SACU 20 Agreement.

Object of Act

2. The object of the Act is to foster economic growth and development in order to raise incomes and promote investment and employment in the Republic and within the Common Customs Area by establishing an efficient and effective system for the administration of international trade subject to this Act and the SACU agreement. 25

Application of Act

3. (1) Subject to subsection (2), this Act applies to all economic activity within, or having an effect within, the Republic.
- (2) Sections 6, 26(1)(a) and 26(2)(a) and Part B of Chapter 4 do not apply to the export or import of goods in respect of which the Minister of Defence has issued a notice in terms of section 4C(1)(a) of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968), prohibiting the— 30
- (a) export or import of those goods; or
- (b) export or import of those goods except under authority of and in accordance with the conditions stated in a permit referred to in section 4C(1)(a)(ii) or (vi) of that Act. 35

CHAPTER 2**TRADE POLICY****Implementation of SACU Agreement** 40

4. (1) The Minister is the head representative of the Republic to the SACU Council.
- (2) The Minister may—
- (a) assign representatives of the Republic to any institution constituted by or in terms of the SACU Agreement; and
- (b) exercise any right of the Republic in terms of the SACU Agreement to nominate or appoint persons to fill any office constituted by or in terms of the SACU Agreement. 45

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(3) The Minister is the head representative of the Republic in any consultations with Member States individually or collectively as contemplated in the SACU Agreement and represents the Republic in any consultations arising in terms of Article 13(4) and (5) and Article 15.

(4) The Commission may, in accordance with this Act, exercise the right of the Republic to grant a rebate of customs duties, as contemplated in Article 20(3). 5

(5) SACU is recognised as a juristic person for all purposes of law within the Republic.

(6) The Minister may refer any decision of the SACU Council of Ministers that concerns customs duties or other measures to the Minister of Finance as a request contemplated in the Customs and Excise Act. 10

(7) The Minister must, by notice in the *Gazette*, publish—

(a) for information any recommendation of the Tariff Board; and

(b) any decision by the SACU Council of Ministers that directly affects the import of goods into, or export of goods from, the Republic. 15

(8) The Minister may, by notice in the *Gazette*, publish any policy mandate, procedure, guideline formulated by the SACU Council of Ministers or application being dealt with by a SACU Member State.

Trade policy statements and directives

5. The Minister may, by notice in the *Gazette* and in accordance with procedures and requirements established by the Constitution or any other relevant law, issue Trade Policy Statements or Directives. 20

Minister's power to regulate imports and exports

6. (1) The Minister may, by notice in the *Gazette*, prescribe that no goods of a specified class or kind, or no goods other than goods of a specified class or kind, may be— 25

(a) imported into the Republic;

(b) imported into the Republic, except under the authority of and in accordance with the conditions stated in a permit issued by the Commission;

(c) exported from the Republic; or 30

(d) exported from the Republic, except under the authority of and in accordance with the conditions stated in a permit issued by the Commission.

(2) For the purpose of subsection (1) goods may be classified according to—

(a) their source or origin;

(b) their intermediate or final destination; 35

(c) the channels along which they are transported;

(d) the manner in which they are imported or exported;

(e) the purposes for which they are intended to be used;

(f) the methods or processes by which they are produced;

(g) the use of non-renewable natural resources in their production, and their life-cycle impact on the natural environment; or 40

(h) any other classification methods determined by the Minister.

(3) A notice issued in terms of this section applies to any person who, at the time of the import of particular goods into the Republic, or the export of particular goods from the Republic— 45

(a) owns those goods;

(b) carries the risk of those goods;

(c) takes or attempts to bring those goods into, or takes or attempts to take those goods from, the Republic;

(d) in any manner whatsoever has a beneficial interest in those goods; 50

(e) acts on behalf of a person referred to in paragraph (a), (b), (c) or (d); or

(f) pretends to be a person referred to in paragraph (a), (b), (c), (d) or (e).

(4) Despite any other provision of this Act, a notice issued in terms of this section in respect of goods that are the subject of a notice issued by the Minister of Defence in

terms of section 4C(1)(a) of the Armaments Development and Production Act, 1968, is deemed to have been revoked as from the date of the latter notice.

CHAPTER 3

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

Part A

5

Establishment and constitution

Establishment and independence of Commission

7. (1) The International Trade Administration Commission is hereby established, and—
- (a) has jurisdiction throughout the Republic; 10
 - (b) is a juristic person; and
 - (c) must exercise its functions in accordance with this Act and any other relevant law.
- (2) The Commission—
- (a) is independent and subject only to— 15
 - (i) the Constitution and the law;
 - (ii) any Trade Policy Statement or Directive issued by the Minister in terms of section 5; and
 - (iii) any notice issued by the Minister in terms of section 6; and
 - (b) must be impartial and must perform its functions without fear, favour or 20
 - prejudice.
- (3) Each organ of state must assist the Commission to maintain its independence and impartiality, and to exercise its authority and carry out its functions effectively.

Constitution of Commission

8. (1) (a) The Commission consists of— 25
- (i) a full-time Chief Commissioner and a full-time Deputy Chief Commissioner; and
 - (ii) not less than two but not more than 10 other Commissioners, each appointed to serve either full-time or part-time, 30
- appointed by the President on the recommendation of the Minister, subject to section 9.
- (b) The Minister must, by notice in the *Gazette* and in any national newspaper, invite nominations for appointment of persons as members of the Commission.
- (c) The members of the Commission must, when viewed collectively, be representative of a broad cross-section of the population of the Republic, including women, and the President must endeavour to ensure participation by significant economic sectors. 35
- (2) The President must, when making an appointment in terms of subsection (1)(a)(ii), determine—
- (a) whether the appointee is to be a full-time or part-time Commissioner; and
 - (b) the term of the appointment, which may not exceed five years.
- (3) If a vacancy arises as a result of the departure of a full-time Commissioner, the 40
 President may, on the recommendation of the Minister—
- (a) leave the position vacant;
 - (b) if the member's term of office has expired, reappoint that member subject to section 9; or
 - (c) in any other case— 45
 - (i) appoint a new member in accordance with subsection (2); or
 - (ii) on the request of a part-time member, transfer that part-time member to fill that vacancy on a full-time basis either for—
 - (aa) the remainder of that member's term of office; or
 - (bb) a term determined by the President in accordance with subsection 50
 - (2).
- (4) If a vacancy arises as a result of the departure of a part-time Commissioner, the President may, on the recommendation of the Minister—
- (a) leave the position vacant;
 - (b) if the member's term of office has expired, reappoint that member subject to 55
 - section 9; or
 - (c) in any other case—

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- (i) appoint a new member on a part-time basis in accordance with subsection (2); or
- (ii) on the request of a full-time member, transfer that member to fill that vacancy on a part-time basis either for—
 - (aa) the remainder of that member's term of office; or 5
 - (bb) a term determined by the President in accordance with subsection (2).

(5) A person may not serve as Chief Commissioner for more than 10 consecutive years.

(6) The Minister must, with the concurrence of the Minister of Finance, determine the remuneration, allowances, benefits and other terms and conditions of employment of the Chief Commissioner, Deputy Chief Commissioner and each other member of the Commission. 10

(7) During the term of office of a member of the Commission, the Minister may not reduce the member's salary, allowances or benefits. 15

(8) The Minister may determine any other conditions of appointment not provided for in this section, but any such conditions may not be of such a nature as to reduce the independence of the Commissioner concerned.

Qualifications of members

9. (1) To be eligible for appointment and to continue to hold office as a member of the Commission, a person must— 20

- (a) be ordinarily resident in the Republic; and
- (b) have suitable qualifications and experience in economics, accounting, law, commerce, agriculture, industry or public affairs.

(2) A person may not be a member of the Commission if that person— 25

- (a) is an office-bearer of any party, movement, organisation or body of a partisan political nature;
- (b) is an unrehabilitated insolvent;
- (c) has been found mentally unfit by an order of a competent court; or
- (d) has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine. 30

Conduct of members

10. (1) A member of the Commission, and a member of the staff of the Commission, must not— 35

- (a) engage in any activity that may undermine the integrity of the Commission;
- (b) participate in any investigation, hearing or decision concerning a matter in respect of which that person has a financial interest or any similar personal interest, as prescribed;
- (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's official functions in the Commission; or 40
- (d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions within the Commission.

(2) If, at any time, it appears to a member of the Commission that a matter before the Commission concerns the financial or personal interest of that member, as prescribed, the member of the Commission must— 45

- (a) immediately and fully disclose the interest to the Chief Commissioner, or in the case of the Chief Commissioner, to the Deputy Chief Commissioner; and
- (b) withdraw from any further involvement in the matter to the extent required by regulation. 50

(3) A member of the Commission must comply with any prescribed code of conduct for members.

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Resignation and removal from office

- 11.** (1) A member of the Commission may, on one month's written notice addressed to the President—
- (a) resign from the Commission; or
 - (b) if he or she is a Chief or Deputy Chief Commissioner, resign from the post but remain as an ordinary member of the Commission. 5
- (2) The President, on the recommendation of the Minister—
- (a) must remove a member of the Commission from office if the member—
 - (i) ceases to be ordinarily resident within the Republic; or
 - (ii) becomes subject to any of the disqualifications referred to in section 9(2); 10
 and
 - (b) may remove a member from office only for—
 - (i) serious misconduct;
 - (ii) permanent incapacity;
 - (iii) engaging in any activity that may undermine the integrity of the Commission; or 15
 - (iv) failure to satisfy the prescribed standards of professionalism, attendance and participation in the functions of the Commission.

Meetings and decisions of Commission

- 12.** (1) The Chief Commissioner must convene the first meeting of the Commission and preside at that meeting. 20
- (2) A majority of the members of the Commission present at a meeting of the Commission forms a quorum.
- (3) The Chief Commissioner must appoint a member of the Commission as Chairperson to preside at meetings of the Commission. 25
- (4) If the Chairperson is not present, the members present at the meeting must nominate a member to preside at that meeting.
- (5) The decision of a majority of the members of the Commission present and voting on a matter is the decision of the Commission on that matter.
- (6) In the case of an equality of votes, the person presiding at the meeting may cast a deciding vote in addition to his or her deliberative vote. 30
- (7) The Commission may make rules of order for its proceedings, but any such rules of order must be consistent with this Act.

Chief Commissioner

- 13.** (1) The Chief Commissioner is the Chief Executive Officer of the Commission, is responsible for the general administration of the Commission, and must— 35
- (a) perform the functions that are conferred on the Chief Commissioner by or in terms of this Act;
 - (b) manage and direct the activities of the Commission; and
 - (c) supervise the staff of the Commission. 40
- (2) The Deputy Chief Commissioner—
- (a) may perform any functions of the Chief Commissioner as assigned by the Chief Commissioner; and
 - (b) must perform the functions of the Chief Commissioner whenever the—
 - (i) Chief Commissioner is unable for any reason to perform the functions of the Chief Commissioner; or 45
 - (ii) office of Chief Commissioner is vacant.
- (3) The Chief Commissioner may assign another member of the Commission to perform any functions of the Chief Commissioner when the Chief Commissioner or the Deputy Chief Commissioner is unable to perform those functions. 50

Committees

- 14.** (1) The Minister may, by notice in the *Gazette* and at the request of the Commission—

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- (a) establish one or more committees of the Commission for any purpose within or ancillary to the functions of the Commission; and
- (b) appoint persons recommended by the Commission to be members of a committee.
- (2) A request to the Minister contemplated in subsection (1) to establish a committee must— 5
- (a) propose specific terms of reference for the committee;
- (b) indicate whether the committee is a permanent committee or is established for a specific term;
- (c) propose persons to be appointed to the committee and designate the proposed chairperson of the committee; and 10
- (d) set out time limits within which the committee must report to the Commission.
- (3) A committee may consist of persons who are not members of the Commission but—
- (a) at least half of the members of each committee must be members of the Commission; and 15
- (b) persons who are not members of the Commission may not vote.
- (4) If a committee is permanent, the Minister must determine the term of office for each person appointed to that committee.
- (5) A committee decision is effective only if the decision is subsequently ratified by the Commission, unless the notice establishing the committee expressly authorises the particular decision to be effective without such ratification. 20

Part B*Functions of Commission***General functions of Commission** 25

15. (1) The Commission must carry out the functions assigned to it in terms of this Act, any other Act or by the Minister.

(2) The Commission must carry out any function that arises out of an obligation of the Republic in terms of a trade agreement, if the Minister has assigned that function to the Commission. 30

(3) The Commission may, to the extent required or permitted by the SACU Agreement, refer matters to any institution constituted by or in terms of the SACU Agreement, and may appear before such an institution.

(4) The Commission may, subject to section 14(5), assign any of its functions to— 35

(a) a member of the Commission;

(b) a committee established in terms of section 14;

(c) a member of the staff of the Commission;

(d) a person referred to in section 23; or

(e) any combination of persons referred to in this subsection.

Customs duties, anti-dumping duties, countervailing duties and safeguard measures 40

16. (1) The Commission must investigate and evaluate—

- (a) applications in terms of section 26 with regard to alleged dumping, or subsidised exports, in or into the Republic or the Common Customs Area;
- (b) applications in terms of section 26 with regard to safeguard measures; 45
- (c) applications in terms of section 26 with regard to amendment of customs duties in the Common Customs Area; and
- (d) matters with regard to safeguard measures or amendment of customs duties in the Common Customs Area, that the—
- (i) Minister directs the Commission to consider; or 50
- (ii) Commission considers on its own initiative.

(2) Sections 26 and 30(1)(a), each read with the changes required by the context, apply to an investigation undertaken by the Commission in terms of subsection (1)(d).